

**From:** Marc A. Tamsky  
**To:** Microsoft ATR  
**Date:** 1/23/02 5:57pm  
**Subject:** Microsoft Settlement

May it please the court:

The following section, offset by the text "COMMENTS FOLLOW", is to be entered in the record under the public comment period required by the Tunney Act(15 USC 16), in the case (United States vs. Microsoft).

-----COMMENTS FOLLOW-----

The proposed settlement "Stipulation and Revised Proposed Final Judgment (11/06/2001)" has several shortcomings not addressed by the court's judgement, but which still stand as important issues. My comments here address, in my view, the most important shortcoming.

As cataloged by the Court of Appeals in this case, one of the important anticompetitive, exclusionary acts that Microsoft has used to bolster application barriers to entry is the withholding of critical technical information regarding the format and design of application file formats (eg. Word, Excel, Access documents.)

In the Remedial Proposals by the several States [Civil Action No. 98-1233 (CKK) (State of New York, et.al., v. Microsoft)] 14.b. contains the following text:

... all technical information required to port Office to other Operating Systems (INCLUDING BUT NOT LIMITED TO FILE FORMATS)...  
[emphasis added]

For the courts to have declared certain actions on the part of Microsoft anticompetitive, and then not address that type of behavior in the final disposition is unforgivable, and such judgment is not in the public interest.

The Court of Appeals in this case held:

"a remedies decree in an antitrust case must seek to `unfetter a market from anticompetitive conduct,' to `terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.'"

Microsoft, 253 F.3d at 103 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 577 (1972) and United States v. United Shoe Mach. Corp., 391 U.S. 244, 250 (1968)) (citation omitted).

Given the findings by the Court of Appeals and the above quoted stipulation, allowing Microsoft to continue its practice of non-disclosure of file formats must be seen as "likely to result in monopolization in the future."

Without demand of remedy by court to have full public disclosure of file formats intended for interchange of information between individuals would leave the public in the same place as it was before this case -- with Microsoft holding the monopoly in applications, by way of the lack of independent software vendors being able to read and write Microsoft-proprietary application file formats.

I thank the court for its attention to this important matter.

Marc Tamsky  
Citizen of California, United States of America.

-----COMMENTS END-----